**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

:: **J U D G M E N T** ::

**S.B. CIVIL FIRST APPEAL NO.21/1989**
**The State of Rajasthan**
**Vs.**
**M/s Gogiya Construction Co.**

S.B. CIVIL FIRST APPEAL AGAINST THE JUDGMENT AND DECREE DATED 13.07.1988 PASSED BY THE LEARNED ADDITIONAL DISTRICT JUDGE, BIKANER IN CIVIL ORIGINAL SUIT NO.185/1985 – M/S GOGIYA CONSTRUCTION COMPANY VS. THE STATE OF RAJASTHAN

DATE OF JUDGMENT : 16th May, 2007

**P R E S E N T**

**HON'BLE MR. JUSTICE DEO NARAYAN THANVI**

Mr. V.R.Mehta, Addl. Government Advocate.
None present for the respondent.

**BY THE COURT :**

This appeal has been filed by the defendant-appellant-State of Rajasthan against the judgment and decree dated 13.07.1988 passed by the learned Additional District Judge, Bikaner in Civil Original Suit No.185/1985 – M/s Gogiya Construction Company Vs. the State of Rajasthan, whereby, he partly allowed the claim of the plaintiff-respondent for a sum of

Rs.32,749/- out of Rs.80,000/-, wherein, the security amount of Rs.12,586 was also included.

The basis of the suit was an agreement dated 23.10.1975 entered into between the parties for excavation work of Rajasthan Main Canal from R.D. 6,80,000 to 6,82,500. The plaintiff-respondent has to complete the work before 29.10.1976 but he could not complete even half of the work in 14 months, therefore, a notice was given to the plaintiff-respondent that if he will not complete the work, the same will be executed by the Department. Since, the plaintiff-respondent could not complete the work, the rest of the work was completed by the Department. Plaintiff-respondent claimed a sum of Rs.63,130/- out of the work of Rs.1,88,988/-, balance of which was paid to him relating to excavation of 38,90,000 qb. ft. soil. The Department in its written statement has stated that plaintiff-respondent has not completed its work during the stipulated time, therefore, he is not entitled to claim any dues from the defendant-appellant.

Upon pleadings of the parties, the learned trial judge framed seven issues including issue relating to the validity of the agreement said to have been executed under Article 299 of the Constitution, which is Issue No.6-A. This issue of validity of

agreement and notice, which is Issue No.6 were decided by the learned trial court and the decree was passed on 26.8.1983 for a sum of Rs.32,749/-. Against this judgment and decree, the State filed an appeal, which was decided by this Court on 25.10.1983, whereby, the decree of the learned trial court dated 26.8.1983 was set aside under Order 12 Rule 6 CPC and rest of the order relating to Issues Nos.6 and 6-A were ordered to be remained intact. After recording the evidence of both the parties, the learned trial Judge passed the impugned decree on 13.7.1988 for a sum of Rs.32,749/-, against which this appeal has been filed.

Learned Additional Government Advocate submits that the decreetal amount is contrary to the facts of the case. The plaintiff-respondent could not complete the work within the stipulated time and the Department has to execute the work, therefore, the learned trial court has committed illegality in awarding the decreetal amount.

I have gone through the judgment of the learned trial court. On Issues Nos. 1 to 5, the learned trial court has disbelieved the version of the plaintiff-respondent for non-completion of the work within stipulated time. The reasons which have been assigned by the plaintiff-respondent for non-

completion of the work are murder of his brother-in-law, adverse climate, non-supply of water and non providing of roller for compression of sand, but the learned trial court has came to the conclusion that when the plaintiff-respondent could not complete its work, the Department had completed it without giving any notice and, consequently, Department cannot claim damages from him. However, it is clear that no work was executed by the plaintiff-respondent after 6.1.77. The claim of the Department to recover the cost of remaining work executed by the Department cannot be said to be genuine because when the agreement was held to be void in pursuance to the decision of Issue No.6-A, the Department cannot claim compensation from the plaintiff-respondent.

Consequently, the decree passed by the learned trial Judge for the sum of Rs.20,574.22 paisa about the balance amount of running bill of Rs.1,25,859/- out of the work of Rs.1,46,433.22 paisa for excavating 30,43,890 qb. ft. soil vide Level Book Ex.A3 and the security amount of Rs.12,586/-, which was due from the defendant-appellant seems to be justified and needs no interference by this Court.

In view of the aforesaid, there is no merit in this appeal. Accordingly, the impugned judgment & decree of the learned

trial court is maintained and the appeal stands dismissed with no order as to costs.

**(DEO NARAYAN THANVI), J.**

**ms rathore**